

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 07-E-0517

In the Matter of the Liquidation of
Patriot Health Insurance Company, Inc.

**LIQUIDATOR'S REPLY TO NHLHIGA'S OBJECTION TO MOTION FOR
APPROVAL OF DISTRIBUTION OF ASSETS, DISPOSAL OF RECORDS
AND TERMINATION OF PROCEEDING**

Roger A. Seigny, Insurance Commissioner of the State of New Hampshire
("Commissioner"), as Liquidator ("Liquidator") of Patriot Health Insurance Company, Inc.
("Patriot"), hereby replies to the Objection filed by the New Hampshire Life and Health
Insurance Guaranty Association ("NHLHIGA") to the Liquidator's Motion for Approval of
Distribution of Assets, Disposal of Records and Termination of Proceeding (the "Motion").

1. Summary. NHLHIGA raises three objections, all of which lack merit. First, it contends that the Liquidator's motion is premature. However, the Liquidator's motion seeks approval of a reasonable and efficient closure process designed to benefit creditors (including NHLHIGA) by avoiding sequential filings that increase administrative expenses and eat into the assets of this very small estate. The New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C ("Act"), does not require the Liquidator to make several filings at each step of the closure process when one will suffice and especially where, as here, the liabilities and assets of the estate have already been determined. Second, NHLHIGA contends that the Motion does not adequately address how any unexpended portion of the \$37,000 reserve, as of the Motion filing date, for the Liquidator's administration costs to closure will be distributed. The affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator ("Bengelsdorf Aff."), submitted in support of

the Motion explains that the Liquidator estimates that his incurred but unpaid administrative expenses plus costs to the point of obtaining a federal waiver and then making the proposed creditor distribution would be approximately \$20,000, thereby leaving a reserve “not to exceed \$17,000” for post-distribution administrative expenses. Bengelsdorf Aff. ¶¶ 10-11. As this language and that contained in the proposed order submitted with the Motion at ¶ 3 (“setting aside a reserve of not more than \$17,000 for post-distribution administrative expenses”) makes clear, once a federal release is received and prior to making the proposed creditor distribution, the Liquidator would refine the estimate for his post-distribution administrative expenses. The obvious objective is to set the reserve so that only a de minimis amount is left over thereby releasing any unneeded reserves for the creditor distribution. Third, NHLHIGA contends that certain expenses it has incurred this spring should be paid out of the estate. However, the claim amendment deadline has long passed, and NHLHIGA’s claim for administrative expenses was finally determined – in the full amount NHLHIGA requested – in March 2010. It cannot seek additional amounts now.

2. The Motion is Appropriate at this Time. NHLHIGA bases its contention that the Liquidator’s motion is premature on RSA 402-C:48, I. That statute only specifies that the Liquidator “shall apply” for a discharge when all assets justifying the expense of collection and distribution have been collected and distributed. Nothing in the statute precludes the Liquidator from applying for approval of a discharge process earlier or deprives the Court of the authority to proceed as it deems most appropriate in the circumstance of a particular proceeding, including approving a discharge upon a condition subsequent. In this case, all the assets of the estate justifying the expense of collection have been collected, and all the liabilities of the estate to creditors have been finally determined. See Motion ¶¶ 5-7. Unfortunately, the issue of potential

federal liability prevents the distribution of the assets now even though the Liquidator is unaware of any liability of Patriot to the federal government and no federal claims have been filed.

Bengelsdorf Aff. ¶ 12. This is a very small estate (with only \$649,413 in assets as of June 17, 2011, Motion ¶ 7.), so the Liquidator is sensitive to the costs of filing separate motions and reports addressing the federal waiver issue, approval of the distribution, disposal of records, handling of unclaimed funds, the closure process and ultimately discharge. It appeared to the Liquidator that it would be most efficient, and cost-effective, to file one motion to address all these issues. Motion ¶¶ 18-19. The Court could enter one order addressing all issues so the Liquidator could proceed to act and then “suspend” the estate while the federal waiver issue is being resolved without the need for further filings and expense. This approved framework would also promote closure of the estate by assuring the United States that it was appropriate to address the waiver issue as the last substantive issue in the estate. This process does not provide the Liquidator with unfettered discretion. The collection of assets and determination of liabilities has already taken place and the approximate distribution percentage reported on to the Court. Motion ¶ 10. With the exception of addressing the federal waiver, the remaining steps are essentially ministerial. The use of the certificate reporting on compliance with the Court’s final order is not unusual.¹

3. The Reserve for Administrative Expenses is Appropriate. NHLHIGA expresses concern that the Motion would permit the retention of excessive administrative expense reserve funds that would create a “windfall” to the State of New Hampshire. NHLHIGA Objection, ¶ 6. As the Liquidator has explained to NHLHIGA, the reserve for post-distribution expenses

¹ This process has been used in closing insolvent insurer estates elsewhere. See the attached 2010 orders of the Massachusetts Supreme Judicial Court for Suffolk County: In Re Abington Mutual Liquidating Trust, SJ-95-278 and In Re New England Fidelity Liquidating Trust, SJ-2000-0394 as well as the certificates filed in each case by the insurance commissioner-receiver completing the proceeding.

proposed in the motion is a maximum reserve amount. See Motion ¶ 9 (“not to exceed \$17,000”). The Liquidator intends that such a reserve will merely be sufficient to cover expenses. The Liquidator will make a more refined reserve estimate after receiving the federal waiver and before actually calculating the distribution amounts. At that point the expenses should be predictable enough that the reserve will be accurate and leave no or only a de minimis amount that would not be economic to distribute in any event. This process is not designed to produce a “windfall” to the state treasury; it is intended to minimize administrative expenses and deal with any small residual funds consistent with the Act. See RSA 402-C:47, I, 48, I.²

4. NHLHIGA’s New Claim Is Improper. Finally, NHLHIGA’s assertion of a new claim for administrative expenses is contrary to the Closure Plan and the Final Notice of Determination on its claim agreed by NHLHIGA and approved by the Court. NHLHIGA’s claim has been finally determined, and it cannot now seek more. In 2008, the Liquidator sought approval of a Closure Plan to provide a framework for the determination of claims so that Patriot’s liabilities would be finally determined. Motion for Approval of Liquidation Closure Plan (July 22, 2008) (The Closure Plan was attached to that motion as Exhibit A). Among other things, the Closure Plan provided that “[t]he portion of NHLHIGA’s claim relating to its administrative expenses through the claim filing deadline will be allowed as a Class I claim.” Closure Plan ¶ 1(c) (emphasis added). The claim filing deadline was July 18, 2008. See Order of Liquidation ¶ (x) (January 18, 2008). NHLHIGA did not object to the Closure Plan, and it was approved by the Court on October 6, 2008. On March 2, 2010, the Liquidator issued a Final Notice of Determination on NHLHIGA’s claim for administrative expenses allowing it in the full amount requested of \$150,502.00. NHLHIGA agreed with the determination on March 15,

² It is noteworthy that under the Closure Plan and the Liquidator’s proposal, any subrogation recoveries after the time the distribution is calculated will be assigned to NHLHIGA. Motion ¶ 7.

2010 in the Acknowledgement of Receipt dated March 15, 2010 attached as Exhibit A. The Final Allowance was presented to the Court on the Schedule to the Liquidator's Report of Claims and Recommendations as of June 8, 2010, and the Court approved the report on July 9, 2010. The determination is final and NHLHIGA cannot now seek to reopen it. See RSA 402-C:41, I. It is important to the closure of the estate that Patriot's liabilities be finally determined and not subject to reopening.³


Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF PATRIOT
HEALTH INSURANCE COMPANY, INC.

By his attorney,

MICHAEL A. DELANEY
ATTORNEY GENERAL

August 9, 2011

By: 
Glenn A. Perlow, NH Bar No. 13085
Senior Assistant Attorney General
Civil Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

³ NHLHIGA has not made a submission regarding these asserted administrative expenses to the Liquidator, so the Liquidator is not sure what they consist of. Based on counsel's description, however, the Liquidator does not accept that they are an administration cost of the liquidation within RSA 402-C:44, I. They are apparently not expenses incurred in handling claims but amounts payable for legal services in considering how best to obtain distributions from the estate.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Liquidator's Reply to NHLHIGA's Objection to Motion for Approval of Distribution of Assets, Disposal of Records and Termination of Proceeding, was sent, this 9th day of August, 2011, by first class mail, postage prepaid to all persons on the attached service list.



Glenn A. Perlow

651790

New Hampshire Life and Health Insurance Guaranty Association

47 Hall Street, Suite 2, Concord, NH 03301 Tel: (603) 226-9114 Fax: (603) 224-6713 www.nhllifegd.org

March 15, 2010

James Hamilton
Patriot Health Insurance Co. in Liquidation
P.O. Box 1720
Manchester, NH 03105-1720

Re: New Hampshire Life and Health Insurance Guaranty Association NODs

Dear Jim:

Enclosed are the three NODs for the Association, amended and signed as we discussed.

POC #:GOVT700013-01	\$1,332,562.88
POC #:GOVT700013-02	\$ 150,502.00
POC #:GOVT700013-03	Withdrawn

Please let me know if you need anything additional.

Thank you for your diligent work on behalf of the estate and the Guaranty Association as the largest creditor. It has been a pleasure working with you.

Sincerely yours,



Laura A. Condon
Administrator

Enclosures

PATRIOT INSURANCE COMPANY, INC. IN LIQUIDATION

P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014
03/02/2010

POC #: GOVT700013-02

Amount Allowed: ~~\$124,652.77~~

\$ 150,502.00

LAC

Attn: Laura Condon, Administrator
New Hampshire Life & Health Ins. Guaranty Assoc.
47 Hall Street, #2
Concord, NH 03301

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class I Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim and in that regard advise as follows:

(Check off all applicable items.)

☒ I agree to the determination.

☐ I reject the determination and intend to file a separate Objection with the Court.

I request that Patriot mail further correspondence to:

☐ same name as above.

new name _____

☐ same address as above

new address _____

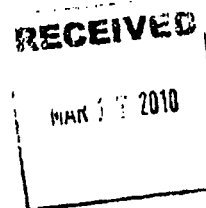
This Acknowledgment of Receipt must be completed, signed and returned to Patriot in order to be eligible for distributions from the Patriot estate as directed by the Court.

Signature: *Laura A. Condon*

Print Name: *LAURA A CONDON*

Title: *ADMINISTRATOR*

Date: *3/15/10*



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2000-0394

In Re:)
)
)
NEW ENGLAND FIDELITY)
LIQUIDATING TRUST)
_____)

ORDER AUTHORIZING FINAL DISTRIBUTION OF ASSETS, DESTRUCTION OF
REMAINING RECORDS, TERMINATION OF THE TRUST AND CLOSING OF THIS PROCEEDING

This matter came before the Court by Motion of Joseph G. Murphy, the Massachusetts Commissioner of Insurance, in his capacity as Trustee (the "Trustee") of New England Fidelity Liquidating Trust (the "Trust"), which Trust is the successor to the assets and liabilities of New England Fidelity Insurance Company. The Trustee sought an order authorizing the distribution of remaining Trust assets to allowed Class 7 creditors after paying administrative expenses to conclude this proceeding, authorizing the destruction of the Trust's remaining records, and directing the termination of the Trust and closure of this proceeding. Based on the evidence presented, it is hereby:

ORDERED that the Motion for Order Authorizing Final Distribution of Assets, Destruction of Remaining Records, Termination of the Trust and Closing of this Proceeding (the

"Motion") is hereby APPROVED, and the Trustee is hereby authorized and directed:

A. To pay administrative expenses of the proceeding and distribute the remaining assets of the Trust to allowed Class 7 claimants in accordance with Exhibit B attached to the Trustee's Affidavit submitted in support of the Motion;

B. To destroy the Trust's remaining records by shredding; and

C. Upon completion of the foregoing requirements, to file with this Court the certificate substantially in the form attached as Exhibit C to the Trustee's Affidavit submitted in support of the Motion, that the foregoing have been completed, at which time, the Trust shall terminate, the Trustee shall be discharged, and this proceeding shall be closed without further order of the Court.

By the Court (Gants, J.) *WGC*

Shanna S. Doyle
Clerk

Entered May 26, 2010

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

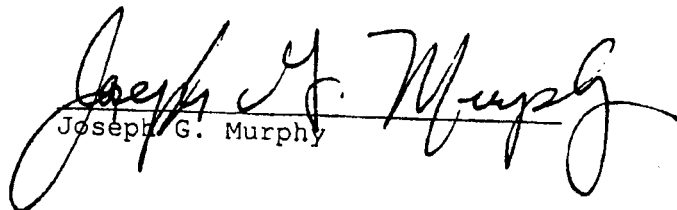
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2000-0394

In Re:)
)
)
NEW ENGLAND FIDELITY)
LIQUIDATING TRUST)
_____)

CERTIFICATE CLOSING PROCEEDING

I, Joseph G. Murphy, Massachusetts Commissioner of Insurance, was appointed the Trustee (the "Trustee") of New England Fidelity Liquidating Trust (the "Trust"), which is the successor to the assets and liabilities of New England Fidelity Insurance Company. The Order Authorizing Final Distribution of Assets, Destruction of Records, Termination of the Trust and Closing of this Proceeding entered on May 26, 2010 (the "Order") directed the Trustee, when able, to file a certificate confirming that all assets of the Trust have been distributed and all remaining records of the Trust have been destroyed, (collectively, the "Terms of Discharge"), all in accordance with the terms of the Order, whereupon the Trust would be terminated, the Trustee would be discharged, and the proceeding closed. In accordance with the Order, I hereby certify that the Terms of Discharge have been fulfilled.

Date: December 28, 2010



Joseph G. Murphy

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. 95-278

In Re:

ABINGTON MUTUAL
LIQUIDATING TRUST

**ORDER AUTHORIZING
FINAL DISTRIBUTION OF ASSETS, DESTRUCTION OF REMAINING RECORDS,
TERMINATION OF THE TRUST AND CLOSING OF THIS PROCEEDING**

This matter came before the Court by Motion of Joseph G. Murphy, the Massachusetts Commissioner of Insurance, in his capacity as Trustee (the "Trustee") of the Abington Mutual Liquidating Trust (the "Trust"), which Trust is the successor to the assets and liabilities of Abington Mutual Insurance Company. The Trustee sought an order authorizing the distribution of remaining Trust assets to allowed Class 7 creditors after paying administrative expenses to conclude this proceeding, authorizing the destruction of the Trust's remaining records, and directing the termination of the Trust and closure of this proceeding. Based on the evidence presented, it is hereby:

ORDERED that the Motion for Order Authorizing Final Distribution of Assets, Destruction of Remaining Records, Termination of the Trust and Closing of this Proceeding (the

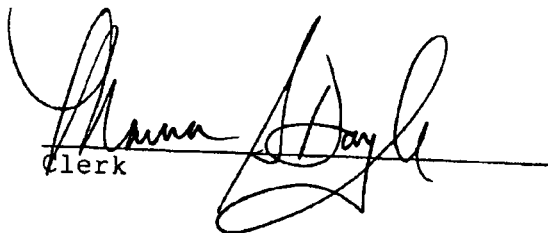
"Motion") is hereby APPROVED, and the Trustee is hereby authorized and directed:

A. To pay administrative expenses of the proceeding and distribute the remaining assets of the Trust to allowed Class 7 claimants in accordance with Exhibit B attached to the Trustee's Affidavit submitted in support of the Motion;

B. To destroy the Trust's remaining records by shredding; and

C. Upon completion of the foregoing requirements, to file with this Court the certificate substantially in the form attached as Exhibit C to the Trustee's Affidavit submitted in support of the Motion, that the foregoing have been completed, at which time, the Trust shall terminate, the Trustee shall be discharged, and this proceeding shall be closed without further order of this Court.

By the Court (Botsford, J.) ^{MB}


clerk

Entered May 11, 2010

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. 95-278

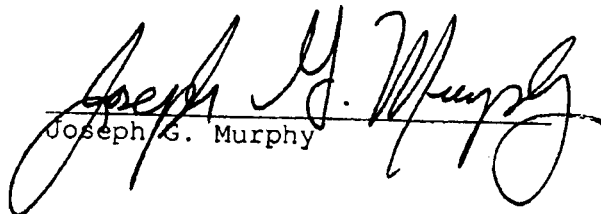
In Re:

ABINGTON MUTUAL
LIQUIDATING TRUST

CERTIFICATE CLOSING PROCEEDING

I, Joseph G. Murphy, Massachusetts Commissioner of Insurance, was appointed the Trustee (the "Trustee") of the Abington Mutual Liquidating Trust (the "Trust"), which is the successor to the assets and liabilities of Abington Mutual Insurance Company. The Order Authorizing Final Distribution of Assets, Destruction of Records, Termination of the Trust and Closing of this Proceeding entered on May 11, 2010 (the "Order") directed the Trustee, when able, to file a certificate confirming that all assets of the Trust have been distributed and all remaining records of the Trust have been destroyed, (collectively, the "Terms of Discharge"), all in accordance with the terms of the Order, whereupon the Trust would be terminated, the Trustee would be discharged, and the proceeding closed without further order of the Court. In accordance with the Order, I hereby certify that the Terms of Discharge have been fulfilled.

Date: December 28, 2010


Joseph G. Murphy

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 07-E-0517

In the Matter of the Rehabilitation of
Patriot Health Insurance Company, Inc.

SERVICE LIST

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Alex Feldvebel	N.H. Insurance Department 21 South Fruit Street Suite 14 Concord, NH 03301 603-271-2261 603-271-1406/fax alex.feldvebel@ins.nh.gov	N.H. Insurance Department Rehabilitator
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N.H. Life & Health
Insurance Guaranty
Association